IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

MACON COUNTY INVESTMENTS, INC.; REACH ONE, TEACH ONE OF AMERICA, INC.,	)	
Plaintiffs,	)	
	)	**Civil Action No.: 3:06-cv-224-WKW**
v.	)	
SHERIFF DAVID WARREN, in his official capacity as the SHERIFF OF MACON COUNTY, ALABAMA,	)	
Defendant.	)	

PLAINTIFF'S REPLY IN SUPPORT OF MOTION TO STRIKE AND APPLICATION FOR DEFAULT JUDGMENT

COME NOW the Plaintiffs, Macon County Investments, Inc., ("MCI") and Reach One, Teach One of America, Inc., ("Reach One, Teach One") and hereby file this Reply in Support of their Motion to Strike and Application for Default Judgment. The Plaintiffs state the following:

1. On April 3, 2006, the Plaintiffs filed a Motion to Strike the Defendant's Motion to Dismiss and Responses in Opposition to the Plaintiff's Application for Preliminary Injunction and Motion for the Commencement of Early Discovery and an Application for Default Judgment.

2. As the basis for the Motion to Strike and Application for Default Judgment, the Plaintiffs assert that the Defendant failed to file his responsive pleadings in the time allotted by the Federal Rules of Civil Procedure. Therefore, any response of the Defendant should be stricken. Additionally, because the responsive pleadings were not brought properly before the Court, the Plaintiffs were due a default judgment against their claims against the Defendant.

3. In the Defendant's Response to Plaintiffs' Application for Default Judgment and Plaintiffs' Motion to Strike, the Defendant's primarily argues that the service upon the Sheriff was insufficient. However, the Defendant did not make this argument in his initial responsive pleadings.

4. Further, the Defendant has not offered this Court any affidavits to support his assertions he has not been properly served. As such, this Court can reasonably conclude that the Defendant was properly serve and that he acknowledges proper service through his filing of a responsive pleading.

5. The law is well settled that the defense of insufficiency of process or the insufficiency of service of process is waived if it is not included in a defensive motion or responsive pleading. Rule 12(h), FRCP; *Sanderford v. Prudential Ins. Comp.*, 902 F.2d 897, 900 (11^{th} Cir. 1990).

6. The Defendant's arguments against service, like his responsive pleadings, are out of time. As such, the defense of insufficiency of service of process should be deemed waived, and the Plaintiffs' Motion to Strike should be granted.

7. The Defendant also argues that the Plaintiffs have not been prejudiced because of his late response. He further argues that when there is a choice whether to decide a case on the merits or on procedure, the preference is to decide the case on the merits.

8. The prejudice to the Plaintiffs is inherent in the Defendant's failure to respond in a timely manner whether it is two days or twenty days. As the Defendant states this lawsuit involves serious claims of declaratory and injunctive relief (Defendant's Response to Motion to Strike, p. 4, ¶16), which is all the more reason why this case

should proceed in a timely fashion in accordance with the procedural rules.

9. As stated in the Plaintiffs' original filings, the harm and prejudice is the protracted, continued non-responsive and evasive conduct of the Defendant in formulating application rules that are impossible to meet after granting a bingo license to others under easier rules, and Defendant's continuing to deny the MCI and Reach One, Teach One and possibly other charity applicants equal protection in their ability to procure a bingo license authorized under Alabama law. The Defendant's conduct toward the Plaintiffs has been to delay and ignore them. He takes the same attitude and conduct toward this court in delaying without justifiable excuse and not complying with the Federal Rules of Civil Procedure.

10. A preference to decide cases on the merits does not allow the Defendant to ignore the rules of procedure. The Defendant knew or should have known that service of the Summons and Complaint was accepted on March 11, 2006. A party cannot ignore pleadings upon receipt and then proceed in asserting defenses to the claims alleged. *See Billy v. Ashland Oil, Inc.*, 102 F.R.D. 230, 234 (W.D. Pa. 1984). The Defendant's delay in responding and conduct in filing a substantive motion to dismiss constitutes waiver of his service argument, and properly and justly subjects him to a default judgment.

11. As stated previously, if it was the sufficiency of this service that the Defendant takes issue with, then he should have filed a Motion to Quash Service by March 31, 2006. If Defendant needed more time to respond, then he could have moved this Court for additional time, moved to file out-of-time, or simply contacted undersigned Counsel

to agree upon an extension.

WHEREFORE, PREMISES CONSIDERED the Plaintiffs respectfully request that this Court grant its previously filed Motion to Strike and Application for Default Judgment.

Respectfully Submitted,

/s/ Ramadanah M. Salaam
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon all counsel of record via this Court's electronic filing system on this the 7th day of April, 2006.

/s/ Ramadanah M. Salaam
OF COUNSEL